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Total Number of Pages in This Submission

5

Application Number	10/815,133
Filing Date	March 31, 2004
First Named Inventor	Bo Xia
Art Unit	2112
Examiner Name	Joseph D. Torres
Attorney Docket Number	1000-0037

ENCLOSURES (Check all that apply)

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Response to Notification of
Non-Compliant Appeal Brief and Return
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Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	The Law Offices of John C. Scott, LLC		
Signature			
Printed name	John C. Scott		
Date	November 10, 2008	Reg. No.	38,613

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S/N 10/815,133

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Bo Xia et al.	Examiner:	Joseph D. Torres
Serial No.:	10/815,133	Group Art Unit:	2112
Filed:	March 31, 2004	Docket No.:	1000-0037
Title:	METHOD AND APPARATUS FOR IMPLEMENTING A LOW DENSITY PARITY CHECK CODE IN A WIRELESS SYSTEM		

RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

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Applicant has reviewed the Notification of Non-Compliant Appeal Brief mailed on October 10, 2008. Applicant's comments are below.

REMARKS

Applicant has reviewed the Examiner's arguments in the Notification of Non-Compliant Appeal Brief (hereinafter "the Notification") mailed on October 10, 2008. The Applicant respectfully disagrees with the Examiner's position for the below described reasons. As such, it is requested that the Examiner withdraw the Notification and allow the present appeal to proceed to the Board of Patent Appeals and Interferences (BPAI).

The Notification indicates in the first line, that the Appeal Brief is defective for "failure to comply with one or more provisions of 37 CFR 41.37." The Notification fails, however, to indicate which one of the provisions of 37 CFR 41.37 is not in compliance. Items 1-8 of the Notification all identify the corresponding provision. Item 10, on the other hand, does not, thus leaving it to the Examiner to identify the provision that is not in compliance. If the Examiner maintains that the Appeal Brief is non-compliant, it is respectfully requested that a new Notification be mailed that identifies the provision that is not in compliance.

In the Notification, the Examiner takes the position that the Appeal Brief filed on August 18, 2008 is non-compliant because of various objections to the claims. It is submitted that this is not one of the "provisions of 37 CFR 41.37" for which a Notification of Non-Compliant Appeal Brief is proper. However, solely for the sake of argument, the claims objections are discussed below.

The final action of April 3, 2008 included objections to claims based on three arguments; namely, (1) claims 1, 15, and 30 refer to elements, such as Appendix A, not having antecedent basis within the claims, (2) 37 CFR 1.75 states that "a claim may not contain any other parts of the application or other material," and (3) MPEP 608.01(m) states that reference characters in claims have to be within parentheses. The Examiner appears to be arguing that objections are to be reviewed by way of petition to the Director of the United States Patent and Trademark Office and that only rejections made based on the merits of the case are reviewed by way of appeal to the BPAI. While this is typically the case, it is submitted that the exact same arguments (i.e., arguments (1), (2), and (3) above) that the Examiner made in support of the claim objections in the final action of April 3, 2008 were also made in the rejection under 35 USC § 112, second paragraph (and, to some extent, in the rejection under 35 USC § 103). Thus, when the BPAI addresses these rejections during the appeal, these arguments will be properly reviewed by the

BPAI. In addition, a decision by the BPAI on the rejections will fully resolve the claim objections made by the Examiner.

In addition to the above, it should also be mentioned that the above-described arguments were originally made in connection with rejections under 35 USC § 112, second paragraph (i.e., in the first office action, mailed on May 4, 2007). In a later action (i.e., the final office action mailed on October 1, 2007), the Examiner added the claim objections based on the same arguments. If the Examiner believed that the claims included informalities requiring correction, then this should have been indicated in the original office action. The Examiner obviously noticed the alleged defects as they were made the basis of rejections in the original office action. By waiting until the final action to add claim objections based on the same arguments used in previous rejections, the Examiner creates the appearance that this was done merely to impede the filing of an appeal by the Applicants.

Based on the foregoing, it is submitted that the Appeal Brief is compliant in its current form and should be forwarded to the BPAI for decision. As discussed above, if the Examiner maintains that the Appeal Brief is non-compliant, it is respectfully requested that a new Notification be mailed that identifies the provision of 37 CFR 41.37 that is not in compliance. If the Examiner maintains that the Appeal Brief is non-compliant, it is suggested that the Examiner and his immediate supervisor call Applicant's attorney (John C. Scott) at 480-948-3745 to discuss the issue in more detail.

Conclusion

Applicant respectfully submits that the appeal brief is in the proper form for submission to the BPAI. The Examiner is invited to telephone Applicant's attorney (480-948-3745) to facilitate prosecution of this application.

Respectfully submitted,

BO XIA ET AL.

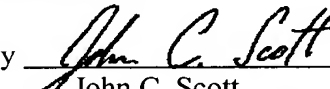
By their Representatives,

Customer Number: 45643

480-948-3745

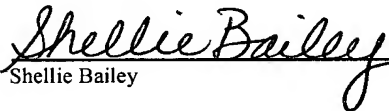
Date: November 10, 2008

By



John C. Scott
Reg. No. 38,613

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Shellie Bailey